SENTENCING GUIDELINES FOR USE BY JUDGES OF THE SUPREME COURT OF JAMAICA AND THE PARISH COURTS

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FOREWORD

These Sentencing Guidelines represent the conceptualization and realization of an important tool geared towards achieving consistency in judicial approach to sentencing.

I am grateful to the Honourable Mr. Justice Dennis Morrison, OJ, CD, President of the Court of Appeal, for accepting my nomination to lead a dynamic group of judges and attorneys-at-law from the Public and Private Bar in crafting this document, which is the first of its kind in Jamaica.

These guidelines have been in draft for some time due to a number of factors. However, they have been frequently updated as a consequence of the enactment of new laws and amendments made to existing legislation. The publication of these Sentencing Guidelines has as its primary goal, the removal of the uncertainty that surrounds the imposition of sentences. With this objective in mind, the guidelines outline relevant considerations relating to the purposes and principles of sentencing. The sentencing table which has been established offers guidance in respect of the normal range of sentences and the appropriate starting point for a vast number of offences which are dealt with in the Circuit Courts and the Gun Courts. It is expected that a similar table will be developed in respect of offences triable in the Parish Courts in due course.

All stakeholders in the criminal justice system will now have a point of reference from which to approach sentencing. In addition, these guidelines will allow attorneys-at-law to advise their clients on possible sentences, particularly where there is an interest in offering a guilty plea.

In some jurisdictions, there are sentencing councils and appropriate legislative support for the sentencing process. The benefits of those types of structures include the consistent review and updating of sentencing guidelines. It is our intention for these guidelines to be reviewed and updated on a regular basis in order to keep abreast of changing circumstances and best practices from other jurisdictions.

These guidelines will undoubtedly add to the array of existing tools which judges now have at their disposal when presiding over cases in our various criminal courts.

The Honourable Mrs Justice Zaila McCalla, OJ
Chief Justice of Jamaica
December 2017

INTRODUCTION

As the Honourable Chief Justice has indicated, these guidelines have been long in coming. When I was asked late in 2013 to chair the committee tasked with the responsibility of preparing them, we envisaged that it would have been possible to complete the work in time for publication by the following year.

With this objective in view, we had the great good fortune of being able to assemble an excellent team, drawn from the judiciary, the public and private Bar, and the Norman Manley Law School. Justices Lloyd Hibbert, CD, and Marva McDonald-Bishop, CD (both then judges of the Supreme Court[1]), were joined by Miss Claudette Thompson (Deputy Director of Public Prosecutions), Miss Linda Wright and Mr Robert Fletcher (nominated by the Jamaican Bar Association and the Advocates Association of Jamaica respectively), and Miss Nancy Anderson (nominated by the Principal of the Norman Manley Law School).

One preliminary decision to be made related to the scope of the guidelines, the principal question being whether we should address the situation of both the Circuit Courts and the Parish Courts (then the Resident Magistrates' courts). In the end, we settled on a compromise. First, given the relatively limited sentencing jurisdiction of the Parish Courts, we decided that we would not at this stage undertake the arduous task of going through the offences triable in those courts on an individual basis in order to determine the usual sentencing ranges and usual starting points for each. However, in the case of the Circuit Courts, it was clear that we could not avoid doing this, given the bewildering variety of statutory offences triable in those courts. The sentencing table which appears at Appendix A is therefore the product of this exercise. But we also decided that, in order for the guidelines to be of the broadest possible utility, it was desirable to incorporate guidance of a general nature as to the sentencing process as a whole. Virtually all of the guidelines speaking to the general principles of sentencing are therefore equally applicable to both the Circuit and Parish Courts.

A large part of the committee's early work was consumed by the process of compiling Appendix A. It involved a detailed, section-by-section review of the Offences Against the Person Act, the Larceny Act, the Sexual Offences Act and the Firearms Act, with the discussion on each being led by a particular member of the committee. The table as originally prepared was subsequently supplemented by the addition of a section on The Law Reform (Fraudulent Transaction) (Special Provisions) Act, which was very kindly prepared by Mrs Justice Lorna Shelly-Williams.

[1] Mr Justice Hibbert has since retired, while Mrs Justice McDonald-Bishop is now a Judge of Appeal.

Simultaneously with the preparation of Appendix A, material relating to general considerations of sentencing was also assembled, disseminated between members and discussed. Soon enough, it became clear that the original completion target was overly ambitious, not only because of the volume of work involved, but also – and hardly least - because each member of the committee had demanding, full-time, responsibilities of his or her own.

Around this time, the entire project was temporarily overtaken by a number of matters, most of which, as it turned out, were highly influential in relation to the shape and content of the final product. First, there were significant statutory reforms affecting sentencing, principal among which was the Criminal Justice (Administration) (Amendment) Act 2015. This measure, as will be seen, placed the well-known principle of the common law of sentencing, which requires sentencing judges to discount sentences on account of guilty pleas, on a statutory footing. Second, as a matter of deliberate policy, the Court of Appeal embarked on a process of providing explicit guidance to sentencing judges, aimed at standardising the process of sentencing and thus promoting greater consistency in sentencing. Third, Appendix A was circulated in draft to all judges of the Supreme Court for comment. By that route, the sentencing table went informally into fairly general use, attracting much positive feedback and very helpful suggestions for improvement from Bench and Bar alike. But, while serving to enrich the process, these developments also significantly increased the scope of what we originally set out to achieve.

As a result of these developments since the inception of the project, the process of preparing the text of the guidelines ended up being equally as time-consuming as the generation of Appendix A. While I assumed primary responsibility for this aspect of the exercise, the final product has benefitted tremendously from detailed and very helpful comments by members of the committee on successive drafts. We were also greatly assisted by the generosity of Mr Justice David Fraser and Mr Jeremy Taylor, Senior Deputy Director of Public Prosecutions, each of whom readily accepted my invitation to prepare drafts of the sections on advance sentence indications and sentencing of offenders convicted of two or more murders respectively. We have also added as Appendix B a note kindly prepared by Mr Justice Fraser on sentences for the offences of motor manslaughter and causing death by dangerous driving. We considered it appropriate to deal with these offences in this way at this stage, given what we understand to be imminent changes to the Road Traffic Act. Naturally, once the details of the new provisions are finally settled, we will move towards incorporating them in the general body of the guidelines.

I must also mention specifically Miss Nancy Anderson and Mr Robert Fletcher, both members of the committee, who of their own motion undertook the responsibility of

preparing the Table of Contents and the tables of legislation, case and text authorities. As regards the latter aspect of this task, they were assisted by Misses Tasanique Henry and Monique Hunter, both students at the Norman Manley Law School.

More generally, I wish to express my deep gratitude to the members of the committee and all others, named and unnamed, who have contributed to bringing these guidelines into being. And, on behalf of the committee, I must thank the Honourable Chief Justice for affording us the opportunity to do this important work. As she has indicated, it is intended to keep these guidelines under constant review. With this in mind, it is to be hoped that in time the work begun by the committee will continue under the aegis of a more permanent body charged with the oversight of sentencing policy for Jamaica on an ongoing basis.

C. Dennis Morrison
President of the Court of Appeal
December 2017

THE GUIDELINES

1. The objectives of sentencing

1.1 Sentencing is a complex process. It inevitably involves the application of a variety of factors, sometimes seemingly in contradiction to each other. It has therefore often been said that the process of arriving at the appropriate sentence is an art and not an exact science.[2] Such a sentence cannot be determined by any strict mathematical formula, but involves the fine balancing of a myriad of considerations.

1.2 In every case, it is the duty of the sentencing judge to strive to arrive at a just sentence. This will usually involve the application of the generally accepted principles of sentencing, against the background of the nature and seriousness of the offence, the circumstances surrounding its commission and the personal circumstances of the offender.[3]

1.3 A just sentence is therefore one which promotes respect for the law and its processes, by reflecting adequately – and proportionately – an appropriate mix of all the relevant factors. Such a sentence is expected to be one which fits the crime as well as the offender.[4]

1.4 Sentences should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Accordingly, they should neither be unduly harsh, in the sense of being incapable of objective justification by reference to the gravity of the crime, the offender's degree of blameworthiness and his or her antecedent data; nor unduly lenient, in the sense of causing outrage to reasonable expectations of what is the minimum required for the protection of the public.[5]

1.5 Linked to the principle of proportionality is the principle of parity of sentences. This requires that, notwithstanding the need for individualisation of sentences, there should in general be parity as between those who have been convicted of similar offences committed in similar circumstances. In order to achieve this objective, sentencing judges

[2] See, for instance, **R v Beckford & Lewis** (1980) 17 JLR 202, 203, in which Rowe JA (as he then was) observed that "[t]here is no scientific scale by which to measure punishment …"

[3] **R v Everald Dunkley**, RMCA No 55/2001, judgment delivered 5 July 2002; **Delroy Barron v R** [2016] JMCA Crim 32

[4] **R v Beckford & Lewis**, per Rowe JA at page 203

[5] See generally Richard Edney and Margo Bagaric, Australian Sentencing Principles and Practice (2007), chapter 5.

must have regard to previous sentencing decisions of the Supreme Court and the Court of Appeal to the extent possible in every case.

1.6 In **R v Beckford & Lewis**, the Court of Appeal identified the four "classical principles of sentencing" as retribution, deterrence, prevention and rehabilitation.[6] This formulation, which is now over 40 years old, has stood the test of time.[7]

1.7 However, it should be noted that more modern – albeit legislative – statements of principle in other jurisdictions, while preserving the core objectives of retribution, deterrence, prevention and rehabilitation, also include more general objectives, such as the promotion of a sense of responsibility in offenders through acknowledgment of the harm done to victims and the community.[8]

1.8 In addition, the sentencing judge must always keep in mind the character and antecedents of the individual offender. As Graham-Perkins JA observed in **R v Cecil Gibson**[9] -

> "... it should never at any time be thought that a convicted person standing in a dock is no more than an abstraction. He is what he is because of his antecedents and justice can only be done to him if proper and due regard is had to him as an individual, and a real attempt is made to deal with him with reference to the particular circumstances of his case. To ignore these is to ignore an essential consideration in the purpose of punishment, namely, the rehabilitation of the offender."

[6] Per Rowe JA, at pages 202-203. Rowe JA's formulation in this case derives explicitly from the well-known judgment of Lawton LJ in **R v Sergeant** (1975) 60 Cr App R 74, at page 77. See also **Benjamin v R** (1964) 7 WIR 459, 460-461, in which the Court of Appeal of Trinidad & Tobago further subdivided the objective of deterrence into, "deterrence … *vis-à-vis* potential offenders", and "deterrence … *vis-à-vis* the particular offender then being sentenced".

[7] See, for example, **Daniel Robinson v R** [2010] JMCA Crim 75, at para. [29]; and **Christopher Brown v R** [2014] JMCA Crim 5

[8] See, for example, section 142 of the English Criminal Justice Act 2003, section 53 of the Bermuda Criminal Code and section 7 of the New Zealand Sentencing Act 2002.

[9] (1975) 13 JLR 207, 211-212; see also **Rowe Gentles et al** v R [2017] JMCA Crim 2, para. [15]

2. The need for adequate pre-sentence information

2.1 In order to deal justly with the individual offender, the sentencing court must be furnished with/have access to all relevant information about him or her.[10]

2.2 At the very minimum, the court must insist at all times on properly prepared antecedent reports on the offender from the police before passing sentence.

2.3. There is no mandatory requirement that a social enquiry report should be obtained in every case.[11] The question whether or not to order one is therefore entirely a matter for the discretion of the sentencing judge in the light of the circumstances of each case.

2.4 However, it is now generally accepted that the obtaining of a social enquiry report as an aid to sentencing is good sentencing practice. Indeed, in relation to serious offences such as murder, manslaughter, rape and the like, it should now be regarded as the almost invariable norm. This is particularly so where such a report has been requested by the defence.[12]

2.5 In cases of suspected psychiatric illness or impairment, it will be desirable to obtain a psychiatric report, so as to ensure that the sentencing judge is equipped with all the material required to determine the appropriate sentence, given the circumstances of the particular offender.[13]

2.6 In capital cases, that is, cases of murder in which the death penalty is sought by the prosecution, the sentencing judge should invariably order both social enquiry and psychiatric reports as a matter of course.[14]

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[10] **R v Bradley Griffiths**, Supreme Court Criminal Appeal No 31/2004, judgment delivered 20 May 2005, page 13

[11] **Michael Evans v R** [2014] JMCA Crim 33; **Sylburn Lewis v R** [2016] JMCA Crim 30

[12] John Sprack, A Practical Approach to Criminal Procedure, 10th edn, para. 20.33, discussing the provisions of the UK Powers of Criminal Courts (Sentencing) Act 2000, as they relate to the use of pre-sentencing reports.

[13] Edney & Bagaric, op. cit., page 164; **R v Valerie Witter**, SCCA No 53/1973, judgment delivered 20 December 1973; **Andrae Bradford v R** [2013] JMCA 17

[14] See **White v The Queen** [2010] UKPC 22, a decision of the Privy Council on appeal from Belize, in which the Board commented (at para. 28) that: "To sentence the appellant to death without a psychiatric report and a comprehensive social enquiry report was plainly wrong. The Board finds it difficult to conceive of circumstances in which it would be right to impose the death penalty without such reports."

3. Non-custodial sentencing options

3.1 Many statutory offences provide for the imposition of a fine as an alternative to imprisonment. The Criminal Justice Administration Act ('the CJAA') also provides for a variety of non-custodial sentencing options in certain cases. These include suspended sentences,[15] community service orders,[16] forfeiture orders,[17] attendance orders[18] and curfew orders.[19]

3.2 In all cases in which the court is by law at liberty to impose a non-custodial sentence, this option should receive the court's first consideration. In other words, in such cases imprisonment should be the last, rather than the first, resort and custody should be reserved as a punishment for the most serious offences.[20]

3.4 The sentencing judge must therefore consider all the circumstances in order to determine whether a non-custodial sentence is appropriate, or whether the seriousness of the offence is such as to warrant the imposition of a custodial sentence.

3.5 Even where the threshold of seriousness has been met, custody may nevertheless be avoided in an appropriate case as a result of personal mitigation, and/or the suspension of a term of imprisonment which does not exceed three years.[21]

3.6 Special provisions apply in cases involving children and tried in Children's Courts established under the provisions of the Child Care and Protection Act. In such cases, sentencing judges should therefore have special regard to the provisions of that Act, in particular section 76, which sets out the orders that may be made by the court in cases where any child is found guilty of an offence before a Children's Court.

3.7 The orders which may be made under section 76 are orders (a) dismissing the case; (b) for probation under the Probation of Offenders Act; (c) placing the child under the supervision of a probation and after-care officer, or some other person to be selected for the purpose by the Minister, for a period not exceeding three years; (d) committing the child to the care of any fit person; (e) with the consent of the child's parent or guardian, imposing a curfew order, a mediation order or a community service order; (f) sending the child to a juvenile correctional centre; (g) ordering the parent or guardian of the child to

[15] Sections 6-9
[16] Sections 9-1000
[17] Section 12
[18] Section 13
[19] Section 14
[20] Criminal Justice Reform Act, section 3(1) and (2); **Dwayne Strachan v R** [2016] JMCA Crim 16, para. [28]; Meisha **Clement v R** [2016] JMCA Crim 26, (2016) 88 WIR 449, para. [25]
[21] CJRA, section 6

pay a fine, damages or costs; and (h) ordering the parent or guardian of the child to enter into a recognizance for the good behaviour of such offender.[22]

[22] And see generally sections 76-84 of the Child Care and Protection Act, where detailed provision is made for the sentencing of children under the Act.

4. Statutory maximum sentences

4.1 Having determined that a custodial sentence is warranted by the circumstances of the case, the sentencing judge must next consider whether any statutory maximum and/or minimum sentences are applicable to the particular offence under consideration.

4.2 The maximum and minimum sentences for the statutory offences most usually encountered in practice are set out in Appendix A.

4.3 Many statutes specify life imprisonment as the maximum sentence to which an offender shall be liable on conviction for an offence, thereby indicating the seriousness with which the legislature views the particular offence. In theory, the sentencing judge in such cases will therefore be confronted with a possible range, subject to any applicable minimum sentence, of imprisonment for one day to imprisonment for life.

4.4 It will be the duty of the sentencing judge in each such case to determine where in that extended range of sentencing possibilities to place the particular offender, bearing in mind the accepted principles of sentencing, the circumstances of the offender and other relevant considerations.[23]

4.5 Sentencing judges should refer to Appendix A, which indicates the normal ranges which are considered applicable to each of the offences dealt with in the sentencing table. These ranges, which are derived from experience and previous sentencing decisions, should in general be applied, although it will ultimately be a matter for the sentencing judge's discretion in each case.

[23] **Meisha Clement v R**, para. [62]

5. Prescribed minimum sentences

General

5.1 Provision is made by statute for mandatory minimum sentences in certain cases. In such cases, the sentencing judge has no discretion to pass sentence below the statutory minimum.

5.2 However, the CJAA makes an allowance for cases in which the sentencing judge forms the view that, having regard to the particular circumstances of the case, it would be manifestly excessive and unjust to sentence the offender to the prescribed minimum sentence.[24] In such cases, after sentencing the offender to the mandatory minimum sentence,[25] the sentencing judge must issue a certificate to the offender so as to allow hi0m or her to seek leave to appeal from a judge of the Court of Appeal against his sentence.[26]

5.3 The sentencing judge's certificate should state (i) that the offender has been sentenced to the prescribed minimum sentence for the offence for which he or she was charged and convicted;[27] (ii) that, having regard to the particular circumstances of the case, it was manifestly excessive and unjust for the offender to be sentenced to the prescribed minimum sentence in relation to the offence;[28] and (iii) the sentence the court would have imposed had there been no prescribed minimum sentence in relation to the particular offence.[29]

5.4 The principal prescribed minimum sentence provisions are now to be found in the Offences Against the Person Act ('the OAPA'), the Sexual Offences Act ('the SOA') and the Firearms Act ('the FA').

[24] CJAA, section 42K(1)
[25] CJAA, section 42K(1)(a)
[26] CJAA, section 42K(1)(b). See also section 13(1A) of the Judicature (Appellate Jurisdiction) Act, which gives jurisdiction to a single judge of the Court of Appeal to hear and grant such applications by imposing a sentence on the offender below the prescribed mandatory minimum period.
[27] CJAA, section 42K(2)(a)
[28] CJAA, section 42K(2)(b)
[29] CJAA, section 42K(2)(c)

The OAPA

Murder

5.5 Section 3(1)(a) of the OAPA provides that every person who is convicted of murder falling within section 2(1)(a) to (f), or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life.

5.6 In cases in which a sentence under these provisions is sought or contemplated, sentencing judges should consider carefully the actual terms of the indictment under which the offender has been brought before the court in order to satisfy themselves of the applicability of the section.

5.7 Before sentencing an offender under section 3(1)(a), the sentencing judge must conduct a sentencing hearing for the purpose of hearing submissions, representations and evidence from the prosecution and the defence as regards the sentence to be passed.[30]

5.8 In cases in which the sentence of death is sought by the prosecution, the sentencing judge should:

(i) ascertain that notice was given to the offender by the prosecution, as from the time of committal, that it proposed to submit that the death penalty is appropriate. The prosecution's notice should contain the grounds on which it is intended to submit that the death penalty is appropriate;[31]
(ii) if the prosecution has so indicated and the sentencing judge considers that the death penalty may be appropriate, at the time of asking the offender to show cause why the sentence should not be passed on him or her, specify a date for the sentencing hearing which provides reasonable time for the offender to prepare;
(iii) give directions in relation to the conduct of the sentencing hearing, as well as indicate the materials that should be made available, so that the offender may have reasonable materials for the preparation and presentation of his or her case on sentence;
(iv) specify a time for the offender to provide notice of any points or evidence on which he or she proposes to rely in relation to the sentence;
(v) give reasons for his or her decision, including stating the grounds on which he or she finds that the death penalty must be imposed in the event that he or she so concludes (the reasons for rejecting any mitigating circumstances should also be specified).[32]

[30] Section 3(1E)
[31] See further para 5.13 below.
[32] See the guidelines formulated by Conteh CJ in **R v Reyes** [2003] 2 LRC 688. These guidelines were strongly endorsed by the Privy Council in **White v The Queen** [2010] UKPC 22 and referred to with approval by the Court of Appeal in **Peter Dougal v R** [2011] JMCA Crim 13.

5.9 Even where the procedure set out in paragraph 5.8 above has been followed, the sentencing judge should only impose the death penalty –

(i) in the most extreme and exceptional cases which, on their facts, can be classified as being the "worst of the worst" or the "rarest of the rare";
(ii) where there is no reasonable prospect of rehabilitation of the offender; and
(iii) where the objectives of punishment cannot be achieved by any other means than the imposition of the ultimate penalty of death.[33]

5.10 Where two or more persons are convicted of a murder falling under section 2(1) (other than a contract murder under section 2(1)(e)), it is only the offender who himself or herself caused the death of, inflicted or attempted to inflict grievous bodily harm on, or used violence on the deceased, who should be sentenced to death or imprisonment for life under section 3(1)(a).

5.11 A pregnant woman who is convicted of murder falling within section (1)(a)–(f), or to whom subsection 1A applies, should not be sentenced to death but rather should be sentenced to life imprisonment or such other term, of not less than 15 years, as the sentencing judge considers appropriate.[34]

5.12 An offender who is convicted for the offence of murder shall be sentenced to death or to imprisonment for life in accordance with the provisions of section 3(1A) if, prior to that conviction, he or she has been convicted in Jamaica,[35] (i) whether before or after 14 October 1992, of another murder done on a different occasion;[36] or (ii) of another murder done on the same occasion.[37]

5.13 However, a person who is convicted of murder falling within section 3(1A) shall not be sentenced to death unless, (i) at least seven days before the trial, the prosecution has served notice on him or her that it is intended to prove the previous conviction;[38] and (ii) before he or she is sentenced, the previous conviction for murder is admitted by him or her, or is found to be proven by the trial judge.[39]

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[33] **Trimmingham v R** [2009] UKPC 25; **Peter Dougal v R**; **White v The Queen.**
[34] OAPA, section 3(2)
[35] OAPA, section 3(1)(a)
[36] OAPA, section 3(1A)(a)
[37] OAPA, section 3(1A)(b)
[38] OAPA, section 3(1D)(a)
[39] OAPA, section 3(1D)(b). Where the convictions are the result of separate trials, these issues should be straightforward. However, where the offender is charged with and convicted of two or more counts of murder on the same indictment, the matter may be problematic. In these circumstances, it would not have been possible to give notice of the previous conviction seven days before the trial, as it would not yet have been recorded against the offender. It may therefore be arguable that section 3(1D) is only applicable where separate trials are held. Sentencing judges should be alive to these issues and ensure that specific submissions are received from the prosecution and the defence on the point before coming to a decision.

5.14 Where the sentencing judge imposes a sentence of life imprisonment under section 3(1)(a), the judge must specify a period of not less than 20 years that the offender must serve before becoming eligible for parole under the Parole Act.[40]

5.15 Section 3(1)(b) provides that, in all other cases of murder not falling within section 2(1)(a)-(f), or (1A), the offender must be sentenced to life imprisonment, or to such other term, being not less than 15 years, as the sentencing judge considers appropriate.[41]

5.16 If the sentencing judge imposes a sentence of life imprisonment, or any other sentence of imprisonment under section 3(1)(b), he or she should specify a period of not less than 15 or 10 years respectively which the offender must serve before becoming eligible for parole.[42]

Shooting with intent to do grievous bodily harm or with intent to resist or prevent lawful apprehension or detainer of any person

Wounding with intent, with use of a firearm.

5.17 These offences attract a maximum sentence of life imprisonment and a minimum term of 15 years' imprisonment, in cases of conviction before a Circuit Court.[43]

The SOA

Rape

Grievous sexual assault

5.18 On conviction in a Circuit Court, these offences attract a maximum sentence of life imprisonment and a minimum sentence of 15 years' imprisonment.[44]

5.19 In any such case, the sentencing judge must specify a period of not less than 10 years which the offender must serve before becoming eligible for parole.[45]

[40] OAPA, section 3(1C)(a)

[42] OAPA, section 3(1C)(b)(i) and (ii)

[43] OAPA, section 20(2) of the OAPA, as amended by section 2(c) of the OAPA (Amendment) Act 2010; section 20(3) provides that, in this section, "firearm" has the meaning assigned to it by section 2 of the FA.

[44] SOA, section 6(1)(a) and (b)

[45] SOA, section 6(2)

The FA[46]

5.20 *Importing into, exporting from or trans-shipping in Jamaica firearms or ammunition without a licence*[47]

Manufacturing, dealing in firearms, ammunition and prohibited weapons without a licence; manufacturing, dealing in firearms, ammunition and prohibited weapons without a licence[48]

Purchasing, acquiring, selling or transferring any prohibited weapon without a licence[49]

Having possession of a firearm or ammunition with intent to endanger life or cause serious injury or to enable another person to endanger life or cause serious injury to property[50]

Making or attempting to use a firearm or imitation firearm with intent to commit or aid the commission of a felony or to resist or prevent lawful apprehension or detention of himself or some other person[51]

5.21 These offences attract a maximum sentence of life imprisonment and a minimum sentence of 15 years' imprisonment.

5.22 Sentencing judges should be careful to note that neither illegal possession of firearm under section 20(1)(b) of the FA, which attracts a maximum sentence of life imprisonment, nor robbery with aggravation under section 37(1)(a) of the Larceny Act, which attracts a maximum sentence of 21 years' imprisonment, is subject to any minimum sentence.[52]

[46] As amended by the Firearms (Amendment) Act 2010
[47] FA, section 4
[48] FA, section 9
[49] FA, section 10
[50] FA, section 24
[51] FA, section 25
[52] **Leon Barrett v R** [2015] JMCA Crim 29; **Jerome Thompson v R** [2015] JMCA Crim 21; **Michael Burnett v R** [2017] JMCA Crim 11

6. The sentencing process

6.1 Assuming that the sentencing judge has gathered all the material necessary to enable him or her to arrive at a proper sentencing decision, the first step in the process is to determine the normal range of sentences for the particular offence under consideration.

6.2 This should usually be done by reference to the circumstances of the offence and the offender, the sentencing table in Appendix A, previous sentencing decisions and any submissions made by counsel for the prosecution and counsel for the offender.

6.3 Having determined the normal range, the sentencing judge should then sentence the offender in accordance with the following steps:

(i) identify the appropriate starting point within the range for the particular offender;
(ii) consider the impact of any relevant aggravating features;
(iii) consider the impact of any relevant mitigating features (including personal mitigation);
(iv) consider, where appropriate, whether to reduce the sentence on account of a guilty plea;
(v) decide on the appropriate sentence;
(vi) make, where applicable, an appropriate deduction for time spent on remand pending trial; and
(vii) give reasons for the sentencing decision.

6.4 Each of these steps is dealt with in detail below.

7. The starting point

7.1 As already indicated, having identified the normal range for the particular offence under consideration, the sentencing judge's first task will be to choose an appropriate starting point. The starting point is a notional point within the normal range, from which the sentence may be increased or decreased to allow for aggravating or mitigating features of the case.[53]

7.2 In arriving at the appropriate starting point in each case, the sentencing judge must make an assessment of the intrinsic seriousness of the offence, taking into account the offender's culpability in committing it, and the harm, physical or psychological, caused or intended to be caused, or that might foreseeably have been caused, by the offence.[54]

7.3 The starting point therefore represents, on a purely provisional basis, the sentence which the sentencing judge considers to be appropriate for the offence, before adjustment, upwards or downwards, on account of any particular aggravating or mitigating factors in the case.

7.4 Accordingly, the maximum period of imprisonment provided by statute for a particular offence, which is usually reserved for the worst examples of that offence likely to be observed in practice, will not normally be an appropriate starting point for sentencing purposes.[55]

7.5 A list of usual starting points for particular offences is set out in Appendix A. The suggested usual starting points reflect experience gathered over time as well as previous sentencing decisions of the Court of Appeal. It is expected that adherence to them will assist in the achievement of one of the key goals of sentencing guidelines, which is to achieve consistency and coherence in sentencing.

7.6 However, the usual starting points set out in Appendix A are intended to be indicative only. While it is expected that sentencing judges will generally find it convenient to adopt them, the starting point ultimately chosen in each case must be the product of the sentencing judge's fresh consideration of what the particular case requires.

7.7 Similarly, in cases of offences not covered by Appendix A, sentencing judges should nevertheless identify a starting point arrived at in keeping with the guidance set out in this section of the guidelines.

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[53] **R v Everald Dunkley**, per Harrison JA at page 4; **R v Saw and others** [2009] EWCA Crim 1, per Lord Judge CJ at para. 4

[54] **Meisha Clement v R**, para. [29]

[55] **Kurt Taylor v R** [2016] JMCA Crim 23, para. [41]; **Meisha Clement v R**, paras [27]-[28]

8. Aggravating factors

8.1 Generally speaking, aggravating factors may relate both to the offence and the offender. However, sentencing judges should guard against double-counting, in that some aggravating factors relating to the offence may also play a part in the choice of starting point.[56]

8.2 There is no authoritative list of aggravating factors. The following list of factors, in no special order of priority, is therefore intended to be illustrative only:

- maturity of the offender
- previous convictions for the same or similar offences, particularly where a pattern of repeat offending is disclosed
- premeditation
- attempts to conceal the evidence
- use of a firearm (imitation or otherwise) or other weapon
- use of violence
- abuse of a position of trust, particularly in relation to sexual offences involving minor victims
- any peculiar vulnerability of the victim
- offence committed whilst on bail for other offences
- offence committed whilst on probation or serving a suspended sentence
- prevalence of the offence in the community
- offenders operating in groups or gangs
- an intention to commit more serious harm than actually resulted from the offence

8.3 Each of these factors may vary in significance from case to case and, as indicated, this is not intended to be an exhaustive list of aggravating factors.

[56] Cf **Aguillera and others v The State**, Court of Appeal of Trinidad & Tobago, Crim. Apps. Nos. 5, 6, 7 and 8 of 2015, judgment delivered on 16 June 2016, in which this problem is arguably avoided by including aggravating and mitigating factors relative to the offending in the assessment of the starting point, but excluding any aggravating and mitigating factors relative to the offender.

9. Mitigating factors

9.1 Mitigating factors are those factors which reduce the seriousness of the offence or the culpability of the offender. The sentencing judge should take into account mitigating factors relevant to both the offence itself and the offender.

9.2 Again in no special order of priority, they include the following:

- youth of the offender
- immaturity of the offender
- the mental state of the offender
- the previous good character of the offender
- absence of premeditation
- where appropriate, whether reparation has been made
- the pressures under which the offence was committed (such as provocation, diminished responsibility, emotional stress or other partial excuse)
- any incidental losses which the offender may have suffered as a result of the conviction (such as loss of employment)
- the offender's capacity for reform
- the offender's role in the commission of the offence, where more than one offender was involved
- co-operation with the police by the offender after commission of the offence
- personal characteristics of the offender, such as physical disability or the like
- family background of the offender
- expressions of remorse by the offender

10. The effect of a guilty plea

The factual basis of the plea

10.1 Where the offender pleads guilty to the offence for which he or she is charged, the first step for the sentencing judge is to ascertain the facts of the case upon which the plea is based. In the usual case, this will be done by counsel for the prosecution outlining to the court a summary of the facts on which the prosecution relies. But the court may also request from the prosecution and the defence a written statement comprising the agreed basis of the plea, including any facts that are disputed among the parties.[57]

10.2 Where there is a conflict between the prosecution and the defence as to the facts of the offence, the sentencing judge may choose to deal with it by hearing submissions from counsel. However, if, having adopted this course, there remains a substantial conflict between the two sides, the sentencing judge must generally accept the offender's version by sentencing the offender on the set of facts which is most favourable to him or her.[58]

10.3 Alternatively, the sentencing judge may choose to conduct a **'Newton'** hearing, by hearing the evidence on both sides and coming to his or her own conclusion, applying the usual criminal standard of proof, on which of the disputed versions should be accepted.[59] However, if the offender's account is disbelieved after such a hearing, the sentencing judge can withhold the discount which he or she would normally receive in recognition of his plea of guilty.[60]

10.4 The decision whether or not to conduct a **Newton** hearing is one for the sentencing judge to make in the exercise of his or her discretion.[61] But such a hearing will not generally be necessary where: (i) the difference in the two versions is immaterial to the sentence, and the same sentence would have been passed regardless of how the issue was determined; (ii) the version put forward by the offender can be described as "manifestly false"; and (iii) matters put forward by the defence did not amount to contradiction of the prosecution's case, but rather to extraneous mitigation explaining the background of the offence or other circumstances which may lessen the sentence.[62]

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[57] CJAA, section 42G(1)

[58] **R v Pearlina Wright** (1988) 25 JLR 221; **Gaynair Hanson v R** [2014] JMCA Crim 1

[59] **R v Newton** (1982) 77 Cr App Rep 13

[60] See generally **R v Newton**; **Glenroy Mitchell v R** [2016] JMCA Crim 27, paras [28]-[30]

[61] **R v Smith** (1986) 8 Cr App R (S) 169

[62] Archbold: Pleading, Evidence and Practice in Criminal Cases, 1992, volume 1, para. 5-41; see also **R v Underwood and others** [2004] EWCA Crim 2256

The guilty plea discount

10.5 Once the sentencing judge has determined the sentence to be imposed, he or she is required to give consideration to a reduction in the sentence on account of a guilty plea.

10.6 The reduction principle is employed because a guilty plea obviates the need for a trial, saves considerable costs and resources and, in the case of an early plea, saves victims and witnesses from the ordeal of giving evidence. It also serves to encourage others to plead guilty where appropriate.[63]

10.7 A guilty plea may also be regarded as an indication of remorse in an appropriate case.[64]

10.8 These are longstanding principles of the common law of sentencing.[65] However, the process of making an allowance for a guilty plea, as well as the level of the allowable discount, is now governed by sections 42D and 42E of the CJAA[66]. But it is important to note that these provisions do not apply to an offender who pleads guilty to the offence of murder falling within section 2(1) of the OAPA, or in circumstances in which section 3(1A) of the OAPA applies.[67]

10.9 The level of discount allowable will depend on the stage of the proceedings at which the offender offers the plea of guilty, principally determined by reference to the "first relevant date". The first relevant date is defined as the first date on which a defendant, who is represented by an attorney-at-law, or who elects not to be represented by an attorney-at-law, -

> "... is brought before the Court after the Judge or Resident Magistrate [Parish Court Judge] is satisfied that the prosecution has made adequate disclosure to the defendant of the case against him in respect of the charge for which the defendant is before the Court."[68]

Plea of guilty to offences other than murder falling within section 2(2) of the OAPA

10.10 In all cases other than those in which a plea of guilty is offered to a charge of murder falling within section 2(2), or to which section 3(1A) of the OAPA applies, the position is

[63] **Keith Smith v R** (1992) 42 WIR 33, 35-36; **Jermaine Barnes v R** [2015] JMCA Crim 3, para. [11]

[64] **R v Collin Gordon**, SCCA No 211/1999, judgment delivered on 3 November 2005, page 4; **Kurt Taylor v R**, para [32]

[65] For a discussion of some of the cases, see **Meisha Clement v R**, especially at paras [36]-[39]

[66] As amended by the Criminal Justice (Administration) (Amendment) Act, 2015, section 2

[67] CJAA, section 42C(a) and (b)

[68] CJAA, section 42A

as follows:[69] where the offender pleads guilty, the sentencing judge may reduce the sentence that would otherwise have been imposed on conviction after trial by up to –

(i) 50%, where the plea is entered on the first relevant date;[70]
(ii) 35%, where the offender indicates to the court that he or she wishes to plead guilty after the first relevant date, but before the trial commences;[71]
(iii) 15%, where the offender pleads guilty, after the trial has commenced, but before the verdict is given.[72]

10.11 In a case in which the offender pleads guilty to an offence punishable by a prescribed minimum sentence, the sentencing judge may nevertheless reduce the sentence in accordance with paragraph 10.10 above without regard to the prescribed minimum sentence.[73] In such a case, the sentencing judge should also specify a period of not less than two-thirds of the sentence thus imposed which the offender must serve before becoming eligible for parole.[74]

10.12 In determining the percentage by which the offender's sentence should be reduced on account of a guilty plea, the sentencing judge must keep in mind such of the following factors as may be relevant:[75]

(a) whether the reduced sentence would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the offender, that it would shock the public conscience;[76]
(b) the circumstances of the offence, including its impact on the victim;[77]
(c) any factors that are relevant to the offender;[78]
(d) the circumstances surrounding the plea;[79]
(e) where the offender has been charged with more than one offence, whether he or she has pleaded guilty to all of the offences;[80]
(f) whether the offender has any previous convictions;[81]
(g) any other factors or principles the court considers relevant.[82]

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[69] CJAA, section 42C(a)(b)
[70] CJAA, section 42D(2)(a)
[71] CJAA, section 42D(2)(b)
[72] CJAA, section 42D(2)(c)
[73] CJAA, section 42D(3)(a)
[74] CJAA, section 42D(3)(b)
[75] CJAA, section 42D(3). See section 42H for the actual list of factors.
[76] CJAA, section 42H(a)
[77] CJAA, section 42H(b)
[78] CJAA, section 42H©
[79] CJAA, section 42H(d)
[80] CJAA, section 42H(e)
[81] CJAA, section 42H(f)
[82] CJAA, section 42H(g)

Plea of guilty to a charge of murder falling within section 2(2) of the OAPA

10.13 Where the offender pleads guilty to the offence of murder falling within section 2(2) of the OAPA, the sentencing judge may reduce the sentence he or she would otherwise have imposed had the offender been tried and convicted of the offence, by up to:

(a) $33^{1/3}$%, where the offender indicates to the court his wish to plead guilty on the first relevant date;[83]

(b) 25%, where the offender indicates to the court that he or she wishes to plead guilty after the first relevant date, but before the trial commences;[84]

(c) 15%, where the offender pleads guilty, after the trial has commenced, but before the verdict is given.[85]

10.14 However, sentencing judges should note that, irrespective of a plea of guilty in these cases, i.e., cases of murder falling within section 2(2) of the OAPA, the court may not impose a sentence less than the prescribed minimum penalty under section 3(1)(b) of the OAPA.[86]

10.15 In determining the percentage by which the offender's sentence should be reduced on account of a guilty plea in relation to a charge of murder falling within section 2(2) of the OAPA, the sentencing judge must also keep in mind such of the factors set out at paragraph 10.11 above as may be relevant.[87]

General

10.16 In the case of an offender who pleads guilty to an offence which is punishable by a prescribed minimum sentence, the sentencing judge may reduce the sentence in accordance with the above principles without regard to the prescribed minimum penalty.[88]

10.17 In such cases, the sentencing judge may also specify a period, being not less than two thirds of the sentence which has been imposed, that the offender should serve before becoming eligible for parole.[89]

10.18 If the offence to which the offender pleads guilty is one for which the maximum sentence is life imprisonment, and that is the sentence which the sentencing judge would have imposed had he or she tried and convicted the offender, then, for the purpose of

[83] CJAA, section 42E(2)(a)
[84] CJAA, section 42E(2)(b)
[85] CJAA, section 42E(2)(c)
[86] CJAA, section 42E(3)
[87] CJAA, section 42E(4)
[88] CJAA, section 42D(3)(a)
[89] CJAA, section 42D(3)(b)

calculating a reduced sentence on account of the guilty plea, the sentencing judge should treat the term of life imprisonment as though it was one of 30 years.[90]

10.19 Sentencing judges should keep in mind that the statutorily prescribed percentage discounts speak to the maximum levels of discount allowable for guilty pleas. The actual level of the discount to be allowed in any particular case will therefore remain a matter for the discretion of the sentencing judge in light of the circumstances of the case and the submissions made by the prosecution and the defence.[91]

10.20 In addition to the timing of the guilty plea, other factors, such as the strength of the case against the offender, may also be relevant to the decision of what discount to apply in a particular case. So, for instance, the sentencing judge may consider that an offender who pleads guilty in the face of overwhelming evidence ought not to receive the same discount as one who has a plausible defence.[92]

[90] CJAA, section 42F

[91] See CJAA section 42G(2), which makes explicit provision for the making and consideration of the parties' submissions.

[92] Archbold: Criminal Pleading, Evidence and Practice, 1992, para. 5-153

11. Time spent on remand

11.1 In sentencing an offender, full credit should generally be given for time spent by him or her in custody pending trial. This should as far as possible be done by way of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.[93]

11.2 The sentencing judge should therefore ensure that accurate information relating to the time spent in custody is made available to the court.

11.3 In pronouncing sentence arrived at in this way, the sentencing judge should state clearly what he or she considers to be the appropriate sentence, taking into account the gravity of the offence and all mitigating and aggravating factors, before deducting the time spent on remand.[94]

11.4 Despite the general rule, the sentencing judge retains a residual discretion to depart from it in exceptional cases, such as, for example:

(i) where the offender has deliberately contrived to enlarge the amount of time spent on remand;

(ii) where the offender is or was on remand for some other offence unconnected with the one for which he or she is being sentenced;

(iii) where the offender was serving a sentence of imprisonment during the whole or part of the period spent on remand; and

(iv) generally where the offender has been in custody for more than one offence and cannot therefore expect to be able to take advantage of time spent on remand more than once.[95]

11.5 This is not intended to be an exhaustive list of instances in which the sentencing judge may depart from the usual rule, and other examples may arise in actual practice from time to time.

11.6 However, because the primary rule is that substantially full credit should be granted for the time spent on remand, the sentencing judge must give reasons for not doing so in any case in which it is decided to depart from the rule in any way.[96]

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[93] **Callachand & Anor v The State** [2008] UKPC 49, para. 9; **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ); **Meisha Clement v R**, paras [34]-[35]; **Richard Brown v R** [2016] JMCA Crim 29

[94] **Romeo Da Costa Hall v The Queen**, para. [26]

[95] **Callachand & Anor v The State**, para. 10; **Romeo Da Costa Hall v The Queen**, para. 18

[96] **Romeo Da Costa Hall v The Queen**, para. [26]

12. Concurrent/Consecutive sentences

12.1 In cases in which the offender is already imprisoned under a sentence for another offence, the sentencing judge may pass sentence of imprisonment for the subsequent offence to commence at the expiration of the previous sentence of imprisonment.[97]

12.2 In relation to convictions for more than one offence tried at the same time, the position is as follows:[98]

(i) where more than one offence is committed in the course of the same transaction, the general rule is that the sentences are to run concurrently with each other;

(ii) where the offences arise out of the same transaction and the appropriate sentence for each offence is a fine, only one substantial sentence should be imposed;

(iii) where the offences are of a similar nature and were committed over a short period of time against the same victim, sentences should normally be made to run concurrently;

(iv) where the offences were committed on separate occasions or were committed while the offender was on bail for other offences, for which he or she was eventually convicted, and in exceptional cases involving firearm offences, there is no objection, in principle, to consecutive sentences;

(v) in all cases, but especially if consecutive sentences are to be applied, the sentencing judge must have regard to the totality principle, meaning to say that the aggregate of the sentences should not substantially exceed the normal level of sentences for the most serious of the offences involved;

(vi) even in cases in which consecutive sentences may be ordered, it will usually be more convenient, when sentencing for a series of similar offences, to pass a substantial sentence for the most serious offence, with shorter concurrent sentences for the less serious ones;

(vii) where, exceptionally, in the view of the sentencing judge, the maximum sentences allowed by statute, do not adequately address the egregious nature of the offences, then, again subject to the totality principle, consecutive sentences may be considered.

[97] CJAA, section 14

[98] **Kirk Mitchell v R** [2011] JMCA Crim 1, para. [57]

13. Advance sentence indications – Practice Direction No. 2 of 2016 (PD 2/16)[99]

13.1 As previously indicated, it is the policy of the law to encourage defendants[100] who know that they are guilty to plead guilty. The primary purpose of a sentence indication is to ensure that a defendant is in a position to make an informed decision as to his or her plea.[101] However, it is at the same time important that judges should safeguard against the creation or appearance of judicial pressure on defendants to plead guilty.[102]

13.2 PD 2/16 therefore establishes a formal process for the giving of an indication by a judge of the sentence a defendant will likely receive if he or she pleads guilty at the stage in the proceedings at which the indication is sought.

13.3 A sentence indication can only be given on an application made by the defendant.[103] Applications for sentencing indications should normally be made in writing in the form provided[104], though the judge may permit an oral application where he or she considers that an application made by that means is adequate.[105]

13.4 In the case of a written application for a sentence indication, the judge should satisfy him or herself that the application has been signed by the defendant and his or her counsel; and that it records the fact that counsel has clearly explained its consequences to the defendant.[106]

13.5 Where the judge permits an oral application, the fact that counsel has clearly explained the consequences of the application to his or her client should be confirmed to the judge by both the defendant and counsel and noted in the official record of the court.[107]

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[99] Issued by the Honourable Chief Justice, after consultation with the judges of the Supreme Court, on 16 September 2016. PD 2/16 is intended to govern the practice in the Supreme Court and Gun Court, as well as to provide guidance to judges of the Parish Courts. It applies principles set out in **R v Goodyear** [2005] EWCA Crim 888.

[100] Throughout these guidelines, the accused is referred to as "the offender", on the basis that, by the time the question of sentence comes to be addressed, the issue of criminal responsibility will already have been determined, either by his or her plea of guilty or the verdict of the jury (or the judge in a judge alone trial). However, in this section, the neutral description "defendant" is used, in recognition of the fact that an advance sentence indication is, by definition, sought and given before guilt has been determined.

[101] PD 2/16, Preamble

[102] PD 2/16, para. 1.1(b)

[103] PD 2/16, para. 3.1

[104] See the Schedule to PD 2/16

[105] PD 2/16, para. 3.15

[106] PD 2/16, para. 3.15

[107] PD 2/16, para. 3.15

13.6 The judge may give a sentence indication relating to (i) a sentence of a particular type; (ii) a sentence of a particular quantum; (iii) a sentence of a particular type and/or of a particular quantum; (iv) a sentence that would not be imposed; or (v) a combination of sentences.[108]

13.7 A sentence indication relating to quantum should be confined to the maximum sentence that would be imposed if a plea of guilty is tendered at that stage of the proceedings. The judge should not indicate the maximum possible sentence which would follow upon conviction after trial.[109]

13.8 The judge may grant a sentence indication if he or she is satisfied that the court has sufficient information for the purpose,[110] but should generally not do so unless he or she has received (a) a summary of facts, agreed on between the prosecution and the defence, on which the sentence indication will be granted; and (b) information as to any previous conviction(s) of the defendant.[111]

13.9 The judge may request a probation or social enquiry report, a psychiatric evaluation or any other report considered useful to assist in granting a sentence indication.[112]

13.10 The judge should not entertain an application for a sentence indication unless there is an unambiguous agreement between the prosecution and defence as regards an acceptable plea to the charge or any factual basis relating to the plea.

13.11 If the prosecution and the defence have agreed on the basis of the plea, the judge should ensure that it is reduced into writing and a copy provided for the court. Alternatively, if the judge is prepared to proceed without the agreed basis of the plea being reduced into writing, that basis should be clearly outlined in court and noted in the official record of the court, with a clear indication that it has been agreed to by both the prosecution and the defence. Any basis for a plea will in any event be subject to the approval of the judge.[113]

13.12 Before granting a sentence indication, the judge should hear from both the defence and prosecution on any relevant material.[114]

13.13 The judge may decline to give a sentence indication, with or without giving reasons;[115] or reserve his or her position until such a time as he or she feels able to give an indication.[116]

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[108] PD 2/16, para. 3.4
[109] PD 2/16, para. 3.5
[110] PD 2/16, para. 3.6
[111] PD 2/16, para. 3.7
[112] PD 2/16, para. 3.8
[113] PD 2/16, para. 3.14
[114] PD 2/16, para. 3.9. See also the guidelines set out in **R v Goodyear**.
[115] PD 2/16, para. 3.10
[116] PD 2/16, para. 3.11

However, where the judge declines to give a sentence indication, the defendant may make another request for an indication at a later stage.[117]

13.14 The judge should not entertain a request for a sentence indication with regard to different sentences that might be imposed on the defendant if he or she were to offer various possible pleas in respect of a particular charge or count.[118]

13.15 A sentence indication should be given in open court in the presence of the defendant and both prosecuting and defence counsel.[119]

13.16 A sentence indication expires on the date indicated by the court; or, if no date is stated, five working days after it is made.[120]

13.17 Subject to expiry or exceptional circumstances, a sentence indication is binding on the judge who gave it and any other judge who subsequently assumes conduct of the matter.[121]

13.18 The fact that an application for a sentence indication has been made or granted should not be published until after the defendant has been sentenced, or the charge against him or her has been dismissed.[122]

13.19 A sentence indication is not subject to appeal. However the defendant's right to appeal against sentence remains unaffected.[123]

13.20 If a defendant declines to offer a guilty plea after a sentence indication has been given, the judge who gave the indication may proceed to try the matter unless that judge is both the tribunal of fact and law.[124]

13.21 The fact of an application by a defendant for a sentence indication is inadmissible in any proceedings and any reference to a sentence indication hearing is inadmissible in a subsequent trial of the defendant[125].

[117] PD 2/16, para. 3.12
[118] PD 2/16, para. 3.13
[119] PD 2/16, para. 5
[120] PD 2/16, para. 8
[121] PD 2/16, para. 11
[122] PD 2/16, para. 9
[123] PD 2/16, para. 12
[124] PD 2/16, para. 13
[125] PD 2/16, para. 10

14. Sentencing in cases involving mentally disordered offenders

14.1 If at the trial of any person for an offence it appears from the evidence that the offender is suffering from a mental disorder so as not to be legally responsible for his or her actions at the time of the offence, the court is required to return a special verdict to the effect that the offender was guilty of the offence but was suffering from the said mental disorder.[126]

14.2 The special verdict on the issue of the offender's mental capacity can only be arrived at on the written or oral evidence of two or more duly qualified medical practitioners, at least one of whom is an approved medical practitioner;[127] that is, a medical practitioner approved under section 7 of the Mental Health Act as having special experience in the diagnosis or treatment of mental disorders.[128]

14.3 Where a special verdict is returned, the court before which the trial has taken place is required to make any one of the following orders:

(a) an order that the offender must be kept in custody at the court's pleasure as a forensic psychiatric inmate, with directions that he or she should submit to appropriate treatment with a view to the improvement of his or her medical condition;

(b) a supervision and treatment order in respect of the offender; or

(c) a guardianship order in respect of the offender.[129]

14.4 After sentencing, a report on the offender's condition is to be submitted to the court by the responsible officer[130] every six months, with copies to the Director of Public Prosecutions and the offender. After considering the report and hearing submissions, the court may (a) confirm the order; (b) make such other order as it considers appropriate; or (c) revoke the order and discharge the offender.[131]

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126 CJAA, section 25E(1)

127 CJAA, section 25E(2)

128 CJAA, section 25(1)

129 Section 25E(3)-(4)

130 The responsible officer in this respect is The Commissioner of Corrections, if the offender is ordered to be kept in custody, or the person appointed as supervisor or guardian, if the orders in para 14.3 (b) or (c) are made.

131 Section 25E(5)-(7)

15. Giving reasons

15.1 The giving of reasons for sentence is an integral part of the sentencing process.[132] Accordingly, as a matter of invariable practice, sentencing judges should give reasons for their sentencing decisions. While offenders are obviously entitled to know the reasons for the sentences imposed upon them, the public also has an equal interest in knowing. In addition, the giving of reasons helps to focus the sentencing judge's mind on making properly structured sentencing decisions, while at the same time facilitating informed review of those decisions on appeal.[133]

15.2 Sentencing judges may find it helpful to adopt a standard template in order to assist in the preparation of reasons. The format suggested in Appendix C is put forward with this in mind.[134]

[132] **Leighton Rowe v R** [2017] JMCA Crim 22, para. [19]

[133] See Andrew Ashworth, Sentencing and Criminal Justice, 5th edn, para. 11.3

[134] Appendix C is adapted from the sentencing format recommended by the Trinidad & Tobago Judicial Education Institute's Sentencing Handbook Sub-Committee (at page 53 of the Handbook).

16. Conclusion

16.1 It bears repeating that these guidelines do not purport to be exhaustive. Rather, they represent a snapshot of contemporary best practices in the area of sentencing, against the backdrop of the relevant statutory provisions and decisions of the courts. Perhaps more so in Jamaica than in some other places, it is still a developing field of study, which continues to be refined by access to more and more relevant information which can influence sentencing policy.

16.2 These guidelines are therefore to be regarded as a modest beginning to a work in progress. It is hoped that sentencing judges will find them of value in their work, while at the same time making the effort to note areas in which they are deficient. Feedback from judges and the Bar will be essential to their improvement and future development

16.3 Looking ahead, it is also hoped that it will be possible before too long to compile a companion volume of reports of sentencing decisions, both from the Supreme Court and the Court of Appeal.

APPENDIX A
SENTENCING GUIDELINES – QUICK REFERENCE TABLE

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
		OFFENCES AGAINST THE PERSON ACT			
Murder	**S. 3**	Death or life imprisonment (in cases of murder committed in furtherance of burglary or housebreaking, arson in relation to a dwelling house, robbery or any sexual offence, or of multiple murders, whether committed on the same or on a different occasion)[135]	15 years (in all other cases)[136] (NB: (i) Where a sentence of life imprisonment is imposed pursuant to s. 3(1)(a), the court shall specify a minimum period of not less than 20 years which the convicted person should serve before becoming eligible for parole[137]. (ii) Where a sentence of life imprisonment is imposed pursuant to s. 3(1)(b), the court shall specify a minimum period of not less than 15	**15 years – life**	**Not applicable**

[135] S. 3(1)(a), read together with s. 2(1)(a) – (f) and s. 3(1A)
[136] S. 3(1)(b)
[137] S. 3(1C)(a)

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
			years which the convicted person should serve before becoming eligible for parole[138]. (iii) Where any other sentence of imprisonment is imposed, the court shall specify a minimum period of not less than 10 years which the convicted person should serve before becoming eligible for parole[139].)		
Attempts to murder	**Ss 14-17**	Life	—	10 – 20 years	12 years
Manslaughter[140]	**S. 9**	Life or fine		3 – 15 years (generally) 3-10 years (diminished responsibility)	7 years (generally) 5 years (diminished responsibility)

[138] S. 3(1C)(b)(i)
[139] S. 3(1C)(b)(ii)
[140] Including homicide pursuant to suicide pacts – s. 7

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Preventing person endeavouring to save his life in a shipwreck	**S. 19**	Life	—	—	—
Shooting or attempting to shoot or wounding with intent to do grievous bodily harm	**S. 20**	Life	15 years (in the case of persons convicted of shooting with intent or wounding with intent involving the use of a firearm)[141]	5 – 20 years	7 years (other than when SMin applies)
Attempting to choke, etc., in order to commit indictable offence	**S. 23**	Life	—	5 – 10 years	7 years
Applying or administering drug with intent to commit indictable offence	**S. 24**	Life	—	5 – 10 years	7 years
Causing bodily injury by explosion or gunpowder	**S. 29**	Life	—	5 – 20 years	7 years

[141] S. 20(2)

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Causing gunpowder or other explosive substance to explode, etc., with intent to do grievous bodily harm	**S. 30**	Life	—	5 – 20 years	7 years
Placing wood, etc., on railway with intent to endanger safety of passengers	**S. 31**	Life	—	5 – 15 years	7 years
Kidnapping with intent	**S. 70(1)**	Life	—	10 – 20 years	12 years
Administering drugs or using instruments to procure abortion	**S. 72**	Life	—	3 – 10 years	5 years
Infanticide	**S. 75**	Life	—	3 – 10 years	5 years
Conspiring or soliciting to commit murder	**S. 8**	10 years	—	3 – 8 years	5 years
Sending, delivering, etc., letters threatening to murder	**S. 18**	10 years	—	2 – 7 years	3 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Administering poison to endanger life or inflict grievous bodily harm	**S. 25**	10 years	—	3 – 8 years	5 years
Genocide	**S. 33**	10 years	—	3 – 8 years	5 years
Conspiracy to kidnap	**S. 70(2)**	10 years	—	3 – 8 years	5 years
Buggery	**S. 76**	10 years	—	2 – 7 years	3 years
Attempted buggery	**S. 77**	7 years	—	1 – 3 years	Purely discretionary
Assaulting magistrate when preserving wreck	**S. 35**	7 years	—	3 – 7 years	3 – 5 years
Child Stealing	**S. 69**	7 years	—	3 – 7 years	5 years
Bigamy	**S. 71**	4 years	—	Purely discretionary	Purely discretionary

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Unlawful wounding	**S. 22**	3 years	—	Purely discretionary	Purely discretionary
Administering poison with intent to injure or annoy	**S. 26**	3 years	—	Purely discretionary	Purely discretionary
Abandoning or exposing child whereby life endangered	**S. 28**	3 years	—	Purely discretionary	Purely discretionary
Endangering safety of passengers on railway	**S. 32**	2 years	—	Purely discretionary	Purely discretionary
Obstructing clergyman in the performance of his duties	**S. 34**	2 years	—	Purely discretionary	Purely discretionary
Assault with intent to commit felony or wilfully obstructing constable	**S. 36**	2 years	—	Purely discretionary	Purely discretionary

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
		SEXUAL OFFENCES ACT			
Rape	**S. 3**	Life	15 years (NB: In cases of rape and grievous sexual assault, the court shall specify a minimum period of 10 years to be served before eligibility for parole – section 6(2))	15-25 years	15 years
Grievous sexual assault	**S. 4**	Life		15-25 years	15 years
Marital rape	**S. 5**	Life		15-25 years	15 years
Attempted rape/grievous sexual assault	**S. 6**	<u>Armed with a dangerous or offensive weapon</u>[142]			
		10 years	—	5-10 years	7 years
		<u>Any other case</u>[143]			
		10 years	—	5-10 years	7 years
	S. 7	<u>Completed offence</u>			
		Life	—	5 - 25 years[144]	7 years

[142] S. 6(1)(c)(i) and 6(1)(d)(i)
[143] S. 6(1)(c)(ii) and 6(1)(d)(ii)
[144] The unusual breadth of this range reflects the wide range of factual circumstances in which the offence of incest may be committed – see ss 7(1) and (2)

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
			Attempt		
Incest		10 years	—	2 – 10 years	5 years
Sexual touching of a child	**S. 8**	10 years	—	5 years	2 – 10 years
Sexual Grooming	**S. 9**	15 years	—	5 years	2 – 15 years
			Completed offence[145]		
Having or attempting to have sexual intercourse with child under 16	**S. 10**	Life	15 years (in cases where defendant is an adult in authority) [146]	**[15]** – 20 years	USP: **[15]** years (NB: See also s. 7(7))
			Attempt[147]		
		15 years	10 years	3 – 10 years	5 years
Householder inducing or encouraging violation of child under 16	**S. 11**	15 years[148]	—	5 – 10 years	5 years

[145] Item 1, Sch. 2

[146] S. 10(4). In such cases, the court must also specify a minimum period of 10 years to be served before eligibility for parole – s. 10(5) 6(2)

[147] Item 2, Sch. 2

[148] Item 3, Ch. 2

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Indecent Assault	**S. 13**	15 years	—	3 – 10 years	3 years
Abduction of child under 16	**S. 15**	15 years	—	3 – 15 years	5 years
Violation of person suffering from mental disorder or physical disability	**S. 16**	15 years[149]	—	3 – 15 years	5 years
Forcible Abduction with intent	**S. 17**	15 years[150]	—	3 – 15 years	5 years
Procuration	**S. 18**	15 years (s. 18(1)(a)), and/or fine[151] 10 years (s. 18(1)(b), (c) and (d)), and/or fine[152]	—	3 – 15 years	5 years
Procuring violation of person by threats, fraud or administering drugs	**S. 19**	15 years[153]	—	3 – 15 years	5 years

[149] Item 5, Sch. 2
[150] Item 6, Sch. 2
[151] Item 7, Sch. 2
[152] Ibid
[153] Item 8, Sch. 2

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Abduction of person under 18 with intent to have sexual intercourse, etc.	**S. 20**	10 years[154]	—	2 – 10 years	5 years
Unlawful detention with intent to have sexual intercourse, etc.	**S. 21**	10 years[155]	—	2 - 10 years	5 years
Living on earnings of prostitution	**S. 23**	10 years	—	3 – 7 years	5 years
		LARCENY ACT			
Simple Larceny	**S. 16**	5 years (NB: Where the convicted person has a previous conviction under section 42, the SMax is 10 years – s. 42((a))	—	1 – 4 years	2 years
Larceny of dogs, etc.	**S. 8**				
Damaging fixtures with intent	**S. 12**				
Praedial larceny	**S. 13**				
Abstracting electricity	**S. 15**				
Larceny by tenant or lodger	**S. 21**				

[154] Item 9, Sch. 2
[155] Item 10, Sch. 2

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Falsification of accounts	**S. 27**				
Possession of housebreaking implements	**S. 42**				
Larceny of cattle	**S. 6**				
Conversion	**S. 24**				
Conversion by trustee	**S. 25**				
Fraudulent inducement	**S. 28**	7 years	—	2 – 6 years	3 years
False pretences	**S. 35**				
Housebreaking with intent to commit felony	**S. 41**				
Larceny of wills	**S. 9**				
Larceny of postal articles	**S. 17**				
Larceny in the dwelling	**S. 17**	10 years	—	3 – 8 years	4 years
Larceny from the person	**S. 19**				
Larceny from ships,	**S. 20**				

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
docks, etc.					
Embezzlement	**S. 22**				
Stealing or embezzlement by officers of the post office	**S. 23**	10 years	—	3 – 8 years	4 years
Assault with intent to rob	**S. 37(3)**				
Sacrilege	**S. 38**				
Housebreaking and committing felony (except rape)	**S. 40**				
Robbery with aggravation and violence and robbery with violence	**S. 37(1)**	21 years	—	10 – 15 years	12 years
Burglary	**S. 38**	21 years	—	10 – 15 years	12 years
Falsification of accounts, books of a bank	**S. 30**	Life	—	3 – 10 years	5 years
Personating the owner of stock	**S. 32**				

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Housebreaking and felony (rape)	**S. 40**	Life (NB: In the case of S. 40 offence involving the commission of a felony other than rape, the statutory maximum is 10 years – see S. 40(b))	—	15 – 25 years	15 years
		FIREARMS ACT			
Importation of firearms or ammunition	**S. 4**	Life	15 years	15 – 25 years	15 years
Manufacturing and dealing with firearms and ammunition	**S. 9**	Life	15 years	15 – 25 years	15 years
Acquisition or disposal of firearm or ammunition	**S. 10**	Life	15 years	15 – 25 years	15 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Possession of firearm with intent to endanger life or cause serious injury to property	**S. 24**	Life	15 years	15 – 25 years	15 years
Use and possession of firearms or imitation firearm with intent to commit or aid in the commission of a felony or to prevent the lawful apprehension of himself or some other person	**S. 25**	Life	15 years	15 – 25 years	15 years
Manufacture or dealing with firearms or ammunition elsewhere than in place specified by holders of Firearms Manufacturer's or Dealer's Licence	**S. 12**	Life	(NB: In the case of an offence against section 12, a fine as an alternative to imprisonment is also available – S. 12(2)(b)(ii))	7 – 15 years	10 years
Shortening or converting firearms other than by the holder of a Gunsmith's Licence	**S. 15**	Life	—	7 – 15 years	10 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Illegal possession of firearms or ammunition	**S. 20**	Life	—	7 – 15 years	10 years
Taking in pawn firearms or ammunition	**S. 19**	10 years	—	3-7 years	4 years
Special restrictions on carrying firearms or ammunition in public places	**S. 22**	7 years		2 – 5 years	3 years
THE LAW REFORM (FRAUDULENT TRANSACTIONS) (SPECIAL PROVISIONS) ACT					
Obtaining property by false pretence	**S. 3**	A fine or Imprisonment not exceeding 20 years or both fine and imprisonment	—	6-10 years	7 years
Inviting a person to Jamaica by false pretence for the purpose of committing an offence	**S. 4**	A fine or Imprisonment not exceeding 20 years or both fine and imprisonment	—	6-10 years	7 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Knowingly causes or knowingly permits premises to be used for the purposes that would create an offence	**S.5**	Fine or Imprisonment not exceeding 15 years	—	4-8 years	5 years
Using an access device to transfer or transport money or monetary instrument	**S. 6(1)**	Fine or Imprisonment not exceeding 25 years or both fine and imprisonment	—	7-12 years	8 years
Threatening or intimidating a person involved in a criminal investigation	**S. 7**	Imprisonment not exceeding 25 years	—	7-12 years	7 years
Theft, forgery, possession, trafficking of access device	**S. 8(1)**	Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	3-7 years	4 years
Permitting another to use data from access device	**S. 8(2)**	Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	3-7 years	5 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
Making, repairing, buying, selling exporting and/or importing possessing instruments that maybe used in copying a data from an access device or forging and falsifying an access device	**S. 9**	Fine or imprisonment not exceeding 20 years or both fine and imprisonment.	—	7-12 years	8 years
			<u>First Offence – Multiple Lead Sheets</u>		
Knowingly obtaining or possessing identity information of another in furtherance of committing the offence	**S. 10(1)**	Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	5-8 years	5 years
			<u>First Offence – Single Lead Sheets</u>		
		Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	1-5 years	3 years
			<u>Second Offence</u>		
		Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	6-12 years	7 years

Offence	Section of Act	Statutory Maximum (SMax)	Statutory Minimum (SMin)	Normal Range (NR)	Usual Starting Point (USP)
			First Offence – Multiple Lead Sheets		
		Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	6-12 years	7 years
			First Offence – Single Lead Sheets		
Transmitting, distributing, sells or offer for sale identity information of any other person	**S. 10(2)**	Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	1-5 years	3 years
			Second Offence		
		Fine or Imprisonment not exceeding 15 years or both fine and Imprisonment	—	6-12 years	7 years
Obtains benefits by menace for himself or another person with the intention of causing loss to any other person	**S.11(1)**	Imprisonment not exceeding 20 years	—	7-12 years	8 years
Conspires, aids, abets, induces, incites another to commit an offence	**S. 12**	Imprisonment not exceeding 15 years	—	6-8 years	5 years

APPENDIX B
MOTOR MANSLAUGHTER AND CAUSING DEATH BY DANGEROUS DRIVING

Summary of Manslaughter/Causing Death by Dangerous Driving Cases: Facts and Sentences

R v Eric Shaw (SCCA 142/73, judgment delivered 29 November 1974)

Trailer driver (defendant) going fast and blowing horn, came around corner onto narrow bridge, collided with wheel of truck going in the opposite direction, that was not on the bridge, then collided into the side of the bridge, mounted a bank and overturned on a Volkswagen car killing its two occupants. The defendant, indicted for two counts of manslaughter was found guilty of causing death by dangerous driving, sentenced to concurrent terms of three years' imprisonment on each count and disqualified for 12 months from holding or obtaining a driver's licence. The disqualification was to commence at the expiration of his sentence. Appeal dismissed.

R v Uroy Anderson (SCCA 212/87, judgment delivered 26 May 1989)

Tipper truck driver (defendant) turned across dual carriageway into pathway of deceased's oncoming vehicle, which crashed into the side of the truck resulting in the deceased's death. The defendant was indicted for manslaughter and convicted of causing death by dangerous driving. He was fined $800 or six months' imprisonment, together with the suspension of his driver's licence for 12 months. On appeal, the court opined that the jury's verdict was charitable, as the evidence could have supported a verdict of guilty of manslaughter. Appeal dismissed.

R v Derrick West (SCCA 103/90, judgment delivered 28 November 1990)

Van driver (defendant) overtaking another van, hit deceased who was crossing road onto sidewalk. Defendant did not stop. He was later seen by a policeman further along the road walking around his vehicle as if under the influence of drink and smelling of alcohol. The defendant was convicted of causing death by dangerous driving and sentenced to three years' imprisonment and disqualified from holding or obtaining a driver's licence for 10

years. On appeal, the conviction was affirmed but sentence was varied to 18 months' imprisonment. However, the period of disqualification was upheld. On page 4 of the judgment of the court, Carey JA made the following observation:

> "With respect to the sentence imposed, we agree with counsel that the sentence was excessive. The learned judge was right to impose a custodial sentence having regard to the manner of driving of this appellant. Such a choice of sentence would act as a deterrent to mark the court disapprobation of drunken drivers. It must always be a matter of degree but this was not the most serious case of causing death by dangerous driving. The disqualification from holding a drivers' license for a very protracted period was a serious punishment. In our view, justice would be served by varying the sentence to eighteen months' imprisonment at hard labour."

R v Rayon Williston (SCCA 58/90, judgment delivered 6 May 1991)

The defendant, while driving fast and in the process of overtaking a vehicle, hit that vehicle and then veered across the road, mounted the sidewalk on the right side of the road, and hit down two women. One died and the other was seriously injured. The defendant was charged for manslaughter and convicted of causing death by dangerous driving. He was sentenced to two years' imprisonment and his driver's licence was suspended for five years. On appeal, sentence was varied to two years' imprisonment suspended for three years, with the suspension of his driver's licence being affirmed.

Lloyd Brown v R (SCCA 119/04, judgment delivered 12 June 2008)

The defendant, a Mack truck driver travelling at 9:40 pm, came over into the lane of oncoming traffic, collided with a pickup, causing it to overturn, and then with a tractor trailer, causing the death of four persons travelling on the tractor trailer. He was charged with and convicted of four counts of manslaughter and sentenced to concurrent terms of six years' imprisonment on each count. Based on deficiencies in the summation that failed to accord with the principles outlined in **Uriah Brown v R** [2005] UKPC 18, the convictions were set aside, convictions for causing death by dangerous driving were substituted and the appellant was fined $200,000.00 or six months' imprisonment on each count. He was

disqualified from holding or obtaining a driver's licence for 18 months. (It is unclear whether the defendant had been in custody from the date of conviction – 4 June 2004 - until the date of the judgment of the Court of Appeal, and, if so, whether that may have influenced the imposition of substituted sentences.)

R v Annmarie Williams (Home Circuit Court, December 2015)

Defendant driving in traffic suddenly veered across the road onto the sidewalk on the other side of the road, hitting down a bus shed, killing two persons and injuring five others. The defendant was charged with two counts of causing death by dangerous driving. The main evidence was that of an accident reconstruction expert, who plotted the path of the car and opined that, in particular, the manner in which it was steered away from a wall after it went onto the sidewalk, showed presence of mind. The defendant relied on the defence of automatism, contending that she had suffered a syncopal attack (fainting spell). On conviction, the defendant was sentenced to one year's imprisonment on each count and disqualified from driving for two years. The defendant was granted bail pending an appeal which is still pending.

R v Christopher Clarke (St Catherine Circuit Court, March 2017)

Defendant was overtaking and hit a motorcycle, as a result of which the pillion passenger died. Defendant was convicted of causing death by dangerous driving and fined $2,000,000 or 12 months' imprisonment and prohibited from driving or obtaining a driver's licence for 12 months.

Commentary

1. The maximum sentence for causing death by dangerous driving under section 30 of the Road Traffic Act is imprisonment for five years. The highest sentence in the cases reviewed was three years' imprisonment and that was in the earliest case of **R v Eric Shaw** (1974).
2. Since then, the highest sentence has been three years, reduced to 18 months on appeal, in the case of **R v Derrick West** (1990). It is not known what sentence was imposed by the Court of Appeal in **Uriah Brown** after the matter was remitted to it

for him to be sentenced for causing death by dangerous driving. However the original sentence on his conviction for manslaughter was two years' imprisonment concurrently on each count.

3. It seems that the trend has been away from immediate imprisonment to either a suspended sentence or a fine with imprisonment in default of payment. This seems to have also coincided with the practice recommended in Archbold, which is that, except in very egregious or aggravating circumstances, the prosecution should not indict for motor manslaughter, but rather for causing death by dangerous driving. (See Archbold 46nd Edn, Para 20-266; Andrew v Directors of Public prosecution (1937) 26 Cr App R34)
4. Recent indications suggest that the new Road Traffic Bill may be passed into law before the end of this year. The maximum penalty for causing death by reckless or dangerous driving is stated in the Second Schedule to the Bill as, "$500,000.00 and imprisonment for five years and disqualification for holding or obtaining a driver's licence for 12 months from date of conviction". This is interesting, as section 30 of the current Road Traffic Act refers only to a penalty of a term not exceeding five years' imprisonment. No fine is mentioned. Therefore, courts in imposing fines would have to do so in reliance on the well-established principle that a fine being a lesser punishment can be substituted, (where appropriate to do so), whenever a term of imprisonment is indicated as punishment for a crime.
5. The fact that a fine is stated first could be interpreted as a legislative indication that a fine should first be considered before imprisonment. This would in any event be in keeping with the trend in causing death matters, as well as with general sentencing principles that a custodial sentence should only be imposed if no other sentence would be appropriate. The fact that $500,000 is the maximum fine may also be instructive as a steer towards leniency in such cases, given the fact that the Bill has proposed an increase in fines in general and that $500,000 is also the maximum fine under the Second Schedule of the Bill for careless driving in which a collision occurs. This in a context in which, currently, fines far in excess of $500,000 have been imposed. See for example **Christopher Clarke** above, where a fine of $2,000,000 was imposed.

6. Perhaps the most that can be said is that, given the myriad of circumstances in which the offence of causing death by dangerous driving can be committed, the sentence imposed will, even more so than usual, be a matter for the discretion of the judge. For the future, it is possible that the exercise of that discretion may be circumscribed by (i) the imminent legislative steer to which reference has been made; and (ii) the general sentencing principle that, where sentencing options other than an immediate custodial sentence are available and appropriate, they should be employed. Custodial sentences would therefore be reserved for offences committed in the most egregious circumstances.
7. (As an interesting aside, the sentences for causing death while under the influence of drink or drugs tend to be comparatively much more severe in countries such as the United Kingdom, where the maximum sentence is 14 years under the UK Road Traffic Act, 1988 – see, for example, Chap 32, Para 59 of Archbold 2012. Generally, the presence of one or more aggravating factors such as intoxication, the loss of more than one life, racing, and failing to stop, among others, would tend to be thought of as warranting a custodial sentence, sometimes far heavier when compared to the approach adopted in Jamaica.)

APPENDIX C

SUGGESTED SENTENCING FORMAT

[1] Introduction

[Nature of the offence for which the offender was indicted and any other relevant information]

[2] The plea

[3] The relevant facts

[If there was a contested trial, refer briefly to the evidence called]

[If there was a plea of guilty, refer to the summary of facts or the agreed basis of plea]

[4] The law

[Statutory provisions: e.g. relevant minimum/maximum sentence provisions, mandatory disqualification, etc].

[Common law: previous sentencing decisions, established sentencing ranges]

[Applicable sentencing guidelines]

[5] Reports and other written documents provided to the court

[Social enquiry reports]

[Forensic psychiatric reports]

[Medical reports]

[Testimonials, etc]

[6] Plea in mitigation

[7] The normal range

[8] The starting point

[9] Mitigating and Aggravating factors

[10] Pronounce sentence

[Explain the sentence to the offender and ensure that it is properly recorded]

[If in writing, hand down sentencing remarks]

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Ashworth, A. *Sentencing and Criminal Justice*	15-1	15.1
Richard Edney and Margo Bagaric, *Australian Sentencing Principles and Practice* (2007)	1-1	1.4
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